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ABSTRACT

The issue of providing public education for undocumented students (children of foreign-born persons who reside and/or work in the United States without proper permission from immigration authorities) is receiving current attention for two major reasons: (1) fear that the financial burden on local taxpayers will increase in areas with increasing concentrations of undocumented students; and (2) Supreme Court declaration that Section 21.031 of Title I of the Texas Education Code, which denies reimbursement of funds to local school districts for educating undocumented children, is unconstitutional. While Texas estimates $85 million a year is spent to educate undocumented students and Los Angeles estimates annual expenditures of $415 million, the question of the actual cost of educating undocumented students continues because most states lack actual enrollment figures. The cost of developing and implementing programs for undocumented children depends upon district characteristics (numbers of students, taxable property per pupil, teacher linguistic characteristics, presence of programs for limited-English-speaking students, pupil-teacher ratios, historical enrollment patterns, status of physical facilities, and proximity to migration streams used by undocumented persons) and student characteristics (numbers, age dispersion, geographic dispersion, English fluency, prior educational experiences, length of presence in this country, and socioeconomic status). (NEC)

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UNDOCUMENTED CHILDREN: AN ONGOING ISSUE FOR THE PUBLIC EDUCATION SYSTEM

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Who Are the Undocumented Students?

Undocumented students are children of foreign-born persons who are residing and/or working in this country without the proper permission from United States immigration authorities. In some cases, children have accompanied their parents in unlawful entry into the United States. More often, families have entered the country legally but have violated the terms of admission by overstaying their visa or visitation status, thereby making their children undocumented. Children of families who may be attempting to become permanent residents are classified as undocumented until the residency process is completed.

How Many Undocumented Students Are in the United States?

Because these students are undocumented, and because most states have not required records of state residency or verification of United States citizenship, the actual number of undocumented students attending public schools in this country is not known.

In an attempt to determine the number of undocumented students, in 1980 the school districts in Texas were surveyed by the Texas Education Agency. The survey found that approximately one percent of the public school population in 332 of the 1,080 districts which responded was composed of undocumented students. A study by Albert Cortez (1981) found that major urban/suburban districts and schools located relatively close to the border had the greatest enrollments of undocumented students. Since the 1980 study by the Texas Education Agency, many schools have increased their estimates of the number of enrolled undocumented students. For example, in Brownsville, Texas, the superintendent of schools estimated that of the 30,000 children in the district, 2,000 were undocumented (**Time**, 1983), although in 1980 Brownsville had reported only 182 undocumented students.

The accuracy of figures reporting undocumented student enrollment has been questioned. Some argue that the counts are underestimated in certain districts because some school officials either may empathize with the undocumented child or may not bother to pursue stringently the identification of all such children residing in the district. On the other hand, others point out that the complexities of immigration law, coupled with most school officials' lack of expertise in the area, probably contributed to misclassification of students as undocumented and resulted in inflated figures. Cortez (1981) concluded:

> The actual counts of undocumented students which enrolled in Texas public schools fell far short of many original projections.
>
> With the exception of major urban and a few high enrollment large city school systems, undocumented students represented **insignificant** numerical increases in most district's ADA (average daily attendance).
>
> For the most part, the percentage of undocumented pupils in proportion to a district's ADA was generally insignificant, falling below 5 percent in 97 percent of all districts reporting undocumented student counts. (p. 22-23)

Given that the counts submitted to the Texas Education Agency were unverified and that districts lacked specific procedures to insure that the students identified in their report were, in fact, undocumented, the data must be approached with caution.

Why Has the Issue of Undocumented Students Emerged?

There are two major reasons the issue of educating the undocumented student has emerged. First, it was felt that in areas with increasing concentrations of undocumented students the financial burden on the local taxpayer would increase. This rationale is based on the assumption that undocumented parents and/or workers do not contribute to the tax system of the local, state, or federal government. However, a U.S. Department of Labor study (1977) indicated that 72 percent of the undocumented workers pay federal income taxes, and the majority of these workers do not try to receive their refunds for fear of deportation. Further, undocumented workers and their families are indirectly supporting the public school system by paying sales tax and gasoline tax, as well as **ad valorem** property tax in the form of rent payments for housing. A 1978 study completed in Orange County, California, demonstrated that the tax contributions of 57,172 undocumented migrants in that area were $83.1 million. The same study showed that a base of 75,000 undocumented migrants would produce tax contributions of $109 million and 100,000 would produce $145.3 million. If the number of undocumented migrants in the United States is between 6 and 10 million, the amount that is gained by the state and federal government through taxes is between $8.718 billion and $14.53 billion (Villalpando, 1981).

The second reason the undocumented student issue has come to the forefront is the amendment to the Texas Education Code passed by the Texas State Legislature in May 1975. The amendment limited benefits from the Available School Fund and free public schooling to citizens and legally admitted aliens. Essentially, Section 21.031 of Title I of the Texas Education Code denied reimbursement of funds to local school districts for the education of undocumented children. It also allowed the school district to exclude undocumented children or to charge them tuition to attend school.

In 1978, several law suits were filed against the Governor of Texas and the State Commissioner of Education. In November of 1979, the Judicial Panel on Multi-district Litigation ordered the consolidation of these suits into one case, **In Re Alien Children Education**, and assigned it to the Southern District of Texas and Judge Woodrow Seals. Among the plaintiffs' arguments were that (1) undocumented children are entitled to due process and equal protection under the 14th amendment, (2) undocumented immigrants within the United States territorial jurisdiction are protected by civil rights statutes, (3) undocumented children were targeted for exclusion for reasons beyond their control (i.e., children are at the mercy of their parents' actions), and (4) the State cannot prove that it will suffer as a result of educating these children.

On September 18, 1980, Judge Seals declared Section 21.031 of the Texas Education Code to be unconstitutional because of the equal protection clause of the Fourteenth Amendment. Judge Seals concluded that the undocumented students residing in Texas were "within the jurisdiction" of the state and subject to its laws and rights, including access to a free education. Judge Seals also pointed out that the majority of the undocumented students are likely to stay in the United States after their legal age of separation from their parents; therefore, by denying these students an education, a great harm is inflicted in that the children are denied the process of assimilation into society as full-fledged participants. An

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enormous public cost in both monetary and human resources is created for the future as these children become adults in a technological world for which they are unprepared. Thus, they become permanently dependent on governmental services (**Agenda**, 1981).

The case, **In Re Alien Children Education**, was appealed and sent to the United States Supreme Court. In the summer of 1982, the Supreme Court in a five-to-four decision upheld Judge Seals' decision that Section 21.031 of the Texas Education Code was unconstitutional (**U.S. News & World Report**, 1982).

What Are the Costs of Educating the Undocumented Students?

Although most states do not know the number of undocumented pupils enrolled in their school systems, in some areas there have been estimates as to the cost to the state or district. Texas has estimated that the state spends approximately $85 million a year to educate the undocumented students. Since the Seals decision and the Supreme Court ruling, the exact number of undocumented students can no longer be counted, causing speculation as to the exact number of students and the actual cost of educating them. For example, Los Angeles schools estimate that they spend $415 million a year to educate undocumented students (**Time**, 1983).

None of the reports has shown the amount undocumented workers have contributed to the tax base for education versus the amount spent to educate undocumented students. Thus, the question of the actual cost of educating undocumented students still goes unanswered.

The report by Cortez (1981) indicated that state financial aid was retained by some school systems showing declining enrollments because of the enrollment of undocumented children within their districts. This was possible because most state aid to school districts is based on a combination of factors involving district property wealth and the average daily attendance (ADA).

The same report noted that in most districts with increasing enrollments the majority of the increase was not due to undocumented children but rather to a history of growth in enrollment. The entrance of undocumented students did account for increases, but the increase caused by undocumented children was significantly lower than the ADA increase experienced in previous years.

What Factors Will Influence the Costs of Developing and Implementing Programs for Undocumented Children?

The legal arguments surrounding the issue of public education for undocumented children frequently refer to the fact that the inclusion of these students will have both fiscal and programmatic impacts for the school districts. However, the projection of fiscal and programmatic impacts is possible only through a systematic contextual analysis of the unique interactive aspects of the specific institution and its student population. Thus, the cost of developing and implementing programs for undocumented children depends upon two major factors: the district's characteristics and the students' characteristics. The district and student characteristics, when combined into a matrix, can aid in estimating the cost of implementing programs for undocumented children (Education of Undocumented Children, 1979).

District characteristics include (1) the size of the total student population measured in terms of the district's average daily membership or its average daily attendance, (2) the relative taxable property per pupil, (3) the linguistic characteristics of the teaching personnel, (4) the presence or absence of an operational program designed to respond to the needs of limited-English-speaking students, (5) current pupil-teacher ratios within the school system, (6) historical enrollment patterns of the receiving school system, (7) status of the physical facilities operated and maintained by the system, and (8) relative proximity of the school system to migration streams utilized by persons of undocumented status.

The most significant student characteristics include (1) the number of school-age eligible children residing in the school system, (2) the geographic dispersion of the undocumented student population within the system, (3) the relative fluency in English and the native language of the target population, (4) the age dispersion of the undocumented student population, (5) the prior educational experiences of the undocumented children, (6) the length of their presence in the United States or local community, and (7) the socioeconomic status of the parents.

The matrix suggests that distinctive school district characteristics and significant elements of the undocumented student population interact, with each cell having possible implications for the response options that are available to the school personnel.

Has the Issue of Educating Undocumented Students Been Resolved?

There are still many political and social issues to be addressed with respect to the education of undocumented students, and many will be resolved in the judicial and political areas. Those which have been addressed by the judicial system to date have generated others for consideration and solution.

Projections of the future impact of undocumented students are overshadowed by unforeseen crises such as the Cambodian refugee influx and the massive Cuban sea-lift operation. Changes in United States immigration policy would certainly affect not only projections but issues to be addressed as well.

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